

April 2, 1991

REPORT TO THE COMMITTEE ON TRANSPORTATION AND LAND USE JUDICIAL PENALTIES

At the Transportation and Land Use Committee's meeting of January 14, 1991 there was considerable discussion regarding the imposition of penalties to deter violations of our Municipal Code. As the City Manager's Report of January 8, 1991 (No-91-20) indicated, the City of San Diego has numerous administrative and judicial mechanisms to ensure compliance.

Over four years ago the City Attorney reported to this committee about the legality of enacting a civil penalties ordinance. See the attached Memorandum of Law of Feb 3, 1987. As a result of this legal analysis the City Council enacted two ordinances which impose civil penalties through two different mechanisms: (1) administrative citations reserved for minor violations (San Diego Municipal Code section 13.0340); and (2) administrative civil penalties hearings reserved for significant and serious Municipal Code violations (San Diego Municipal Code section 13.0330).

The recent experience of the City Attorney's Code Enforcement Unit supports the need to expand this civil penalty authority to judicial actions brought by the City Attorney. Pursuant to San Diego Municipal Code section 13.0202 the City Attorney can file an action in Superior Court to seek injunctive relief for violations of the Municipal Code. These types of actions are generally reserved for the most serious code enforcement cases that involve imminent hazards to the public's health and safety, i.e. slumlords, drug abatement, continuous violations, etc. Although the underlying civil action compels compliance via injunctive relief, there is no existing mechanism in our Municipal Code to judicially assess civil penalties.

The attached draft ordinance would expand existing authority by permitting a court to assess civil penalties against Municipal Code violators as part of an underlying civil action brought by the City Attorney's Office. Payment of these civil penalties would go directly to the City's Code Enforcement Civil Penalties Fund pursuant to San Diego Municipal Code section 13.0338.

The draft ordinance would establish a maximum civil penalty of two thousand five hundred dollars (\$2,500) per violation of the Municipal Code. The civil penalty could be assessed by the

court for each day the violation remains on the property, although the court has the discretion to decide the total amount of civil penalties. This amount is based on provisions found in the California Business and Professions Code for Unfair Business Practices. This same amount is also found in the existing administrative civil penalties ordinance-San Diego Municipal Code section 13.0330.

This draft ordinance would further enhance the City's code enforcement efforts as an additional financial deterrent.

Respectfully submitted,

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ATTACHMENT

RC-91-15